THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO. 25958 OF 2003

DATE: 18.10.2006

Between:
M.M. Gangadharam

.... Petitioner

and

The District Judge, Vizianagaram and another.

.... Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO. 25958 OF 2003

ORDER: (Per Sri Bilal Nazki,J)

Heard the learned counsel for the petitioner and also the counsel appearing for the respondents and perused the record.

The petitioner was removed from service by the respondents on certain charges. Thereafter, he filed Writ Petition No.12087 of 1993, which came to be decided by a Division Bench of this Court on 1.11.1999. The High Court allowed the writ petition and directed, "in the result, this writ petition is allowed in part reducing the quantum of punishment from that of termination of service to that of reinstatement without back wages. But we make it clear that his service will be reckoned as continuous for the purpose of terminal benefits". After this judgment was passed by this Court, consequential order was passed by the District Judge, Vizianagaram on 27.11.1999 reinstating the petitioner and posting him as Process Server in the District Court, Vizianagaram against the existing vacancy. He started working again and his pay was fixed and paid to him. Thereafter, an order was passed on 7.11.2003 by the District Judge Vizianagaram and in that order the District Judge referred to the earlier dismissal of the petitioner and the orders in the writ petition and finally came to the conclusion that the petitioner was not entitled for notional increments for the period for which he was out of service and while fixing his salary after

reinstatement, the salary had been fixed giving him the benefit of the notional increments for the period for which he was not in service. Therefore, the District Judge directed recovery from the petitioner of the excess amount paid and also directed re-fixation of the salary.

We have seen the order passed by the Division Bench in Writ Petition No. 12087 of 1993.

The Court did not give any benefit to the petitioner vis-à-vis the period for which he was out of service and it was also categoric that the Court held, “we are of the considered view that reinstatement into service without back wages would serve the ends of justice”. Therefore, there was no question of fixing his salary after giving effect to increments notionally while fixing his salary. The Court only directed that the service would be reckoned as continuous for the purpose of terminal benefits. This benefit can be given to the petitioner only at the time of superannuation. Therefore, the impugned order does not suffer from any illegality.

However, the learned counsel for the petitioner submits that the petitioner is a Process Server and he would not be knowing as to how much salary he would be entitled to at the time of reinstatement. The salary was also fixed by the respondent and also paid by the respondent and it would be too harsh for him if the amounts paid in excess are recovered from him as he also suffered some ordeals during the period when he was out of service for seven years.

In that view of the matter, we direct that the excess salary be not recovered, but the petitioner be paid the salary according to the fixation made in terms of the impugned order dated 7.11.2003. The writ petition is accordingly disposed of. No costs.

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BILAL NAZKI,J

DATE: 18th October, 2006

NOOTY RAMAMOHANA RAO,J

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